IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

CRL.A.No. 783 of 2001()

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CC.255/1997 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHERTHALA

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APPELLANT:

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V.P.NAIR, EXECUTIVE,
SEA PEARL ENTERPRISES,
CHANDIROOR.

BY ADV. SRI.ROY CHACKO
SRI.TOMY P.T.

RESPONDENTS:

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GEORGE,
54/A, BHARATMATHA COLLEGE ROAD,
THRIKKAKKARA, KOCHI.

BY ADV. SRI.GEORGE(PARTY)
PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.R.UDAYABHANU, J.**

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Crl.A.No.783 of 2001(C)

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Dated this the 22nd day of August, 2007

**J U D G M E N T**

The appellant is the complainant in the proceedings initiated under Section 138 of the Negotiable Instruments Act, in which the accused has been acquitted.

2. The case of the complainant, which has been filed by the Chief Executive Officer of Sea Pearl Enterprises company, as the Power of Attorney Holder of the firm, is that the accused purchased frozen shrimps worth rupees four lakhs from the company on 25/11/1996 and issued the impugned cheque dated 27/12/1997, which when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent demanding payment was received but no reply was sent nor was the amount paid.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 and 2 and Exts.P1 to P9. PW.1 is the Chief

Executive and PW.2, the Managing Partner. Ext.P1 is the Power of Attorney duly executed by PW.2.

4. I find that the findings of the court below that the complainant has failed to establish the maintainability of the petition cannot be upheld in view of the fact that the complainant being the Chief Executive as well as the Power of Attorney Holder of the company is perfectly entitled to initiate the proceedings especially in view of the fact that it is criminal proceedings. I find that the finding of the court below in this regard is erroneous and has to be set aside. The same is held in favour of the revision petitioner/complainant.

The other contention is that the complainant has not produced the documents etc. to establish the fact of sale of the frozen shrimps. Of course no contra evidence has been adduced on the same. I find that the matter requires reconsideration. The finding of acquittal is set aside. The matter is remitted back to the court below. The court below is directed to dispose of the matter on merits after permitting the parties to adduce further

evidence if they so desire. The case shall stand posted before the court below on 20/09/2007.

**K.R.UDAYABHANU,**
**Judge**

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**K.R.UDAYABHANU, J.**

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Crl.A.No.783 of 2001(C)

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**J U D G M E N T**

22nd August, 2007